

REVISED
FINAL STATEMENT OF REASONS
BUSINESS PARTNER AUTOMATION (BPA) PROGRAM
TITLE 13, ARTICLE 3.6.

Sections 225.03, 225.09, 225.12, 225.18, 225.21, 225.35,
225.42, 225.45, 225.48, 225.54, and 225.72

1) The Update to the Initial Statement of Reasons

There are no changes to the initial statement of reasons, which is hereby incorporated by reference, with the exception of the following:

Section 225.03(h)

The term “dismantler” was added to require a copy of the Occupational License form (OL39) because the Occupational Licensing Program licenses dismantlers.

Section 225.09(b)(3)

The term “junk” was originally identified as junks. The “s” has been deleted to identify the correct term for the types of vehicle transactions second-line business partners are allowed to process.

Section 225.18(d)(1)(B)

The FBI fingerprint requirement was deleted because of the increase in terrorist and immigration-related identification requests from other state and federal government agencies has increased the turnaround time for the fingerprint identification to an unacceptable level. The department has determined that at this time the Department of Justice fingerprint check would provide an adequate safeguard for the review of arrests and convictions related to an owner’s/employee’s BPA job functions.

Section 225.45(a)

The term “*process transactions identified in Section 225.45 (b)(1) through (3) of these regulations*” in Exception (1) was added to specify the types of transactions in which a program fee may be disclosed on the conditional sales contract or lease agreement.

Language in subdivision (a), Exception 2 which defines a salvage pool was deleted to eliminate duplication of statute.

An exception was added in subdivision (a)(3) to allow for consistent treatment of business partners who disclose fees as required under Section 330.30, Title 13, California Code of Regulations.

Section 225.45(b)

Adding the term “*through to completion*” makes specific when a customer may be charged to process a vehicle transaction.

A review of the customer fee limits found that the maximum amount of fees was inadequate. The maximum amount business partners are allowed to charge was amended to relate the fee to the type of occupational license held by the business partner processing the vehicle transactions. Dealers and dismantlers may statutorily charge up to \$45 for a documentation fee. Thus the fee to electronically process a vehicle transaction by a

dealer and dismantler remained at the original amount established in the regulations. A random sampling of registration services and industry workshops indicated that a fair market value to process the transactions by registrations services and salvage pools would be approximately fifty to seventy-five dollars (\$75) depending on the documentation required to process a transaction. Therefore, the department has determined that a maximum charge of seventy-five dollars (\$75) would allow all business partners to cover the expenses that may be required to process a variety of transactions.

Section 225.45(c)

This subdivision has been amended to inform the affected public that business partners are not authorized to charge a fee when processing vehicle license fee refunds.

Section 225.48(a)

The named vehicle transactions in subdivision (a) have been deleted to simplify the sentence and include all transactions authorized. A sentence has been added to inform the affected public that the transaction fee is different from the customer fees and may be charged by a business partner. Subdivision (a)(1) was added to inform the affected public that a transaction fee is prohibited when processing a vehicle license fee refund transaction to avoid double billing as the department already charges an administrative fee of \$16 to process the refund.

Surety Bond Approval by the Department of Justice

The original notice indicated that the surety bond had been submitted to the Department of Justice (DOJ) at the time the notice was published. The bond approval had not been requested at that time. A letter and the surety bond was submitted to DOJ on February 16, 2006 and approved on February 17, 2006. The documents to submit the approved form to the Office of Administrative Law for printing are being processed to coincide with this rulemaking file.

2) Imposition of Mandate on Local Agencies or School Districts

The department's regulatory action amending Sections 225.03, 225.09, 225.12, 225.18, 225.21, 225.35, 225.42, 225.45, 225.48, 225.51, 225.54, and 225.72 in Article 3.6, Chapter 1, Division 1, Title 13, California Code of Regulations, does not impose any mandate on local agencies or school districts and imposes (1) no cost or savings to any state agency, (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, (3) no other non-discretionary cost or savings to local agencies, and (4) no costs or savings in federal funding to the state. No studies or data were relied upon to make this determination.

3) Summary of Comments Received and Department Response

The proposal was noticed on July 8, 2005, and made available to the public from July 8, 2003 through August 22, 2005. The department received one (1) written comment and one (1) email comment during the public comment period. A Notice of Modification was made available to the public from November 9, 2005 through November 28, 2005. No comments were received during the 15 day comment period.

The Surety Association of America-signed by Robert J. Duke, Director-Underwriting, letter dated July 28, 2005

The proposed surety bond form (REG 866 (REV. 4/2005)) contains the following condition:

NOW THEREFORE, the conditions of the foregoing obligation are that if the principal shall not cause any loss to the public or the State of California arising out of the operation of the private industry partnership, then this obligation is to be void; otherwise it is to remain in full force and effect.

A bond condition that is based on the principal's payment of loss "arising out of the operations" of the partnership potentially could include obligations not required by the statute or regulation. The current form, REG 866 (NEW4/2003), identifies the condition of the bond by referencing Section 1685 and 1810.7 of the vehicle Code and Section 225.09 of Title 13 of the Regulations. Although, the condition of the bond is set forth only by reference to certain statutory and regulatory provisions, these provisions contain specific obligations of the principal. For example, Section 225.09 requires the following obligations;

- The business partner shall pay to the DMV monies collected by the business partner and due to the DMV (Section 225.09(d));
- The business partner shall hold the State of California harmless for losses caused by business partner's misuse of information obtained by the DMV (Section 225.09(c)); and
- The business partner shall reimburse the State for loss arising out of the business partner's duties, functions or other obligations (Section 225.09(e)).

Under the 2003 edition of the bond, the condition is tied to the obligations set forth by statute and regulation. In fact, the 2002 edition of the bond also ties the condition of the bond to the principal's obligation in the regulation. Reference to the regulatory obligations serves as a clear limit or parameter of the events that trigger the surety's obligations under the bond. The proposed form and phrase "shall not cause any loss...arising out of the operations of the private industry partnership" do not provide such a clear limit. Under the current and prior forms, the surety knew what triggered its obligations by simply reviewing the regulation. There is less certainty under the proposed bond condition. We recommend that, at the least, the current bond conditions should be maintained. In addition, we recommend that the bond form should be conditioned on the principal's compliance of its regulatory obligations, and the form should explicitly state these obligations in the bond form.

As a final point, although the proposed form binds both the surety and principal, the form does not provide a space for the principal to sign. Signatures for both the surety and principal are needed.

Department's Response:

The general law governing bonds permitted or required as a condition of issuance of a license or permit is the Bond and Undertaking Law, Chapter 2 (commencing with section 995.010) of Division 14 of Part 2 of the Code of Civil Procedure (CCP). Also significant is the Surety Law, Title 13 (commencing with section 2787) of Part 4 of Division 3 of the Civil Code. General law provides that when provisions of the Vehicle Code are different or inconsistent with the Bond and Undertaking Law, the Vehicle Code provisions govern (CCP 995.202(a)).

Vehicle Code section 1685 authorizes the department to adopt regulations to establish additional requirements to safeguard privacy, protect the information authorized for release, ensure adequate oversight and monitor business partners to protect against the improper use of vehicle records. The bond is one of the components in meeting these objectives.

The surety bond was revised for consistency with the Attorney General's approved surety bond format as provided in chapter 1, Title 11 of the California Code of Regulations. This bond revision focused on the conditions of the bond, the objectives of the statute and how the bond would address risk for any actions committed by one or more business partners while acting in the name of the department. The bond is a means for the department to receive monetary compensation if it becomes necessary to fix or mitigate problems caused in the name of the department and while processing the department's work. Therefore, the bond must use terms to adequately cover the areas of risk the department assumes when allowing third parties to electronically access its vehicle records and process official department registration documents.

Section 225.09(e) of the regulations requires a business partner to reimburse the State for loss arising out the business partner's duties, functions or other obligations. As amended, the surety bond now uses the broad language "arising out of the operation of the private industry partnership" to address and include the various conditions as stated in section 225.09(e).

In conclusion, the Business Partner Automation surety bond, approved by the California Attorney General, meets the department's obligation under the statutes, to establish safeguards to protect the State and its citizens. The suggestions and rationale to change the bond are not persuasive enough to revise the bond conditions.

California Code of Civil Procedure, Section 995.320(a) states that a bond must be signed by all sureties but is silent on a similar requirement for principals. The department wished to facilitate a faster turnaround time in completing bonds, so the principal's signature line was deleted. The form has been approved by the California Attorney General's surety bond liaison prior to the publication of the notice and availability of the proposed form. Therefore, no changes are need in the bond.

John Cameron, Vice President Sales, Transportation Services Division, First Advantage, email dated August 22, 2005. The complete, original email is provided in Exhibit 6. An attachment sent by email repeats the originally proposed modification of Section 225.45 as follows:

(a) A business partner shall complete a Business Partner Automation Disclaimer form, REG 4020 (Rev. 1/2004) for each DMV transaction when a customer fee is charged.
EXCEPTIONS: (1) A business partner completing a conditional sales contract or lease agreement pursuant to Civil Code section 2982, 2982.5 or 2985.8 may disclose the amount of any optional Business Partnership Automation program fee to register or transfer a vehicle using the sales contract or lease agreement in place of the Business Partner Automation Disclaimer form. (2) A business partner acting as a salvage pool, as specified in Vehicle Code Section 543, engaged exclusively in the business of disposing of total loss salvage vehicles, nonrepairable vehicles, or recovered stolen vehicles sent to it by, or on behalf of, insurance companies, authorized claims adjusters, leasing companies, self-insured persons, or financial institutions shall be exempt from completing the form.

The following suggestion was provided at the bottom of the attachment. In the interest of creating a level playing field for all SLBP's participating in the BPA program as well as easing the burden of paperwork auditing for CADMV and FLBP's, First Advantage ADR respectfully requests that the same language ("Optional DMV Electronic Filing Fee.") used on a conditional sales contract or lease agreement that is contained on any signed receipt from a SLBP disclosing the customer fee be included as an EXCEPTION to the REG 4020 form.

Department's Response:

Section 225.45 was modified to authorize business partners that are licensed registration services to be exempt from using the form (REG 4020) when the fee is disclosed as required under Title 13, Section 330.30, California Code of Regulations.

4) Determination of Alternatives

No alternative considered by the department would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the adopted regulations. The department made an effort during the development of the emergency and permanent regulations to lessen adverse economic impact wherever possible, as demonstrated in the summary and response to comments. During the rulemaking process no reasonable alternative that would lessen the adverse economic impact on small business was submitted.

5) Incorporated by Reference

The department finds that it would be cumbersome, unduly expensive, or otherwise impractical to publish the documents incorporated by reference in this regulatory action in the California Code of Regulations, and the documents are readily available from the department. The documents were made available upon request directly from the department. A form, REG 5056 (NEW 2/2/05) was missing in Exhibits 3 and 16. It was inadvertently not copied in the file submitted to OAL but was always included in the department's rulemaking file during the rulemaking process.